

REMARKS/ARGUMENTS

The Examiner has required restriction of the above-identified application as follows:

Group I: Claims 1-7 and 11;

Group II: Claim 8;

Group III: Claim 9; and

Group IV: Claim 10.

The Examiner is also requiring an election of a single disclosed species for component B for examination purposes.

Applicants have elected, with traverse, Group I, Claims 1-7 and 11, for prosecution.

Applicants have further elected the species of an inorganic salt for B, as the species for examination purposes only.

Restriction is only proper if the restricted inventions are independent or patentably distinct (MPEP § 803). The burden is on the Examiner to provide adequate reasons and/or examples to support any conclusion of patentable distinctness (MPEP § 803). Applicants respectfully traverse the restriction and election requirements on the ground that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between any of the restricted inventions and species.

The Examiner has asserted that the inventions of Group I, Claims 1-7 and 11, and Group II, Claim 8, are related mutually exclusive species in an intermediate-final product relationship. Inventions so related are only distinct if “the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive.” (MPEP § 806.05(j)).” However, in this case, the sole claim of Group II, Claim 8, actually depends from the claims of Group I, Claims 1-7. Thus, the invention of Group II contains all the limitations of Claims 1-7 of Group I. Accordingly, the claims of these Groups overlap in scope and are not mutually exclusive.

The Examiner has also asserted that the inventions of Group I, Claims 1-7 and 11, and Group IV, Claim 10, are related mutually exclusive species in an intermediate-final product relationship. As noted above, inventions so related are only distinct if “the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive.” (MPEP § 806.05(j)).” However, in this case, the sole claim of Group IV, Claim 10, depends from the claims of Group I, Claims 1-7. Thus, the invention of Group IV contains all the limitations of Claims 1-7 of Group I. Accordingly, the claims of these Groups overlap in scope and are not mutually exclusive.

It is also noted that no attempt has been made to demonstrate patentable distinctness between Group III and any of the other groups. Accordingly, Group III should certainly be examined along with elected Group I. At a minimum, if the Examiner continues to restrict Group III from Group I, such a restriction should not be made final.

For all of these reasons, the Restriction Requirement is improper and should be withdrawn.

Similarly, no adequate reasons and/or examples have been provided to support a conclusion that the identified species of component B are patentably distinct. Instead, only a bare conclusion of patentable distinctness has been provided. Accordingly, the Requirement for Election of Species is also improper and should be withdrawn.

Application No. 10/771,535
Reply to Restriction Requirement dated April 19, 2006

Applicants submit that the present application is now ready for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Stephen G. Baxter
Registration No. 32,884

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)